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EXAMINER

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| ART UNIT | PAPER NUMBER |
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/064,104
Filing Date: June 11, 2002
Appellant(s): VACKER, TRESE J.

MAILED
JUN 07 2005
Group 3700

Trese J. Vackar
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 18 April 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The grouping of claims is no longer necessary. 37 CFR 1.192(c)(7) has been replaced by 37 CFR 41.37(c)(1)(viii). Rules of Practice before the Board of Patent Appeals and Interferences, Final Rule, 69 Fed. Reg. 49959 (August 12, 2004).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

| | | |
|-----------|----------|---------|
| 3,613,694 | Benjamin | 10-1971 |
| 4,106,515 | Miller | 8-1978 |
| 1,385,722 | Sessoms | 7-1921 |

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-2 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin in view of Miller.

Benjamin discloses a hair trim guide comprising an eyeglass frame having a front face frame (F) and a pair of temple pieces (T) attached to and extending rearwardly from the front face frame (F), shown in Figure 1. Each of the pair of temple pieces (T) is biased inwardly and has a portion thereof resting upon an ear of a user when the eyeglass frame is positioned for use, as shown in Figure 1. A trim guide (template 16) is selectively attached to the eyeglass frame, as shown in Figure 1. The trim guide (template 16) is frangible at its cut lines (32, 34, 36) inscribed on the trim guide, as discussed in column 2, lines 31-46. The cut lines (32, 34, 36) are horizontal. Benjamin also teaches bias cut lines (70, 72, 74, 76) in column 3, lines 16-25. Benjamin does not disclose vertical cut lines. However, it would have been obvious to one having ordinary

skill in the art at the time the invention was made to apply the same principal of adjustability shown by the horizontal and bias cut lines to the width of the trim guide by including vertical cut lines, in order to provide adjustability of the width of the trim guide, and in effect, the width of the sideburns. It is well known that men vary the width of their sideburns when trimming.

Benjamin does not disclose a peg attached to the eyeglass frame and projecting therefrom. Miller discloses a peg (shaft 24) attached to a frame and projecting therefrom so that it can fit through an aperture (slit 32) of a trim guide (template 28), as discussed in column 2, lines 7-23. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a peg attached to the temple of the frame of Benjamin, as taught by Miller, and an aperture on the trim guide of Benjamin, as taught by Miller, in order to provide a means for attaching the trim guide to the temple in such a way that the trim guide does not slide laterally out of position.

Claims 3-7 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin in view of Miller as applied to claims 1-2 and 8-10 above, and in further view of Sessoms.

Benjamin and Miller disclose the features discussed above, but not disclose multiple pegs or multiple apertures. Sessoms discloses an adjustable neck shaving guide strip (1) including multiple holes (openings 2) and multiple pegs (buttons 4). The purpose of the multiple holes (openings 2) and multiple pegs (buttons 4) is to adjustably attach the two components, which is the same function as that of the peg (shaft 24) and

aperture (slit 32) of Miller. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the combination of Benjamin and Miller with multiple pegs and multiple apertures, as taught by Sessoms, since multiple pegs and multiple apertures are art recognized functional equivalents of the shaft and slot of Miller. When the multiple holes replace the vertical slit taught by Miller, the multiple holes would form a vertical array, since the adjustability is in the vertical direction. Further, using multiple holes prevents accidental sliding.

Claims 11-13 recites the reverse structure of claims 3-7 in the sense that the pegs are located on the trim guide instead of the frame and the holes are located on the frame instead of the trim guide. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the combination of Benjamin, Miller, and Sessoms with the pegs located on the trim guide instead of the frame and the holes located on the frame instead of the trim guide, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Gazda*, 104 USPQ 400 (CCPA 1955).

(11) Response to Argument

With respect to claim 1 and depending claims 2-13, Appellant's sole contention is that the threaded shaft (24) of Miller (U.S. Patent No. 4,106,515) is not a peg. The threaded shaft (24) of Miller, however, is a peg according to the definition of a peg provided in Appellant's Appeal Brief, since it is **a small cylindrical pin used to fasten things**. (Emphasis added.) Therefore, the shaft (24) in Miller meets the broad

Art Unit: 3732

definition of a "peg." Since the shaft (24) in Miller meets the broad definition of a "peg," Miller meets the limitation of claim 1 that the trim guide (template 16) is selectively pegged to the eyeglass frame (F and T). Appellant's contention that the shaft (24) of Miler is not a "peg", is accordingly incorrect.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,



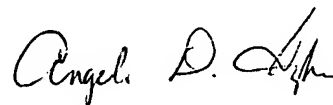
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